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NOMINATION OF K. WILLIAM O'CONNOR

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF K. WILLIAM O'CONNOR TO BE SPECIAL COUNSEL OF THE MERIT SYSTEM PROTECTION BOARD

SEPTEMBER 23, 1982

Printed for the use of the Committee on Governmental Affairs

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NOMINATION OF K. WILLIAM O'CONNOR

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The committee met at 2 p.m., in room 3302, Dirksen Senate Office Building, Hon. William V. Roth, Jr. (chairman of the committee) presiding.

Present: Senators Roth and Levin.

OPENING STATEMENT OF SENATOR ROTH

Chairman ROTH. The committee will be in order. I am sorry that we are trying to rush things because of an upcoming vote. First of all, Mr. O'Connor, I want to welcome you here and say that the committee appreciates your cooperation and assistance in preparing for this hearing.

We are, of course, here to consider your nomination as Special Counsel to the Merit Systems Protection Board. As you well know, the Special Counsel of MSPB has a very sensitive position.

The law gives statutory protection to Federal employees who disclose fraud and other illegal activities. The Special Counsel must insure that this law is upheld. I think it is critically important that the whistleblowers who have the courage to reveal waste in Federal programs must be protected. It takes a lot of courage to do that, especially if you cannot be sure whether or not it might backfire.

So, I think that protection for these "whistleblowers" is of critical importance. Morale will be enhanced as civil servants become confident that their efforts toward improving their particular place of work will be appreciated and will promote prompt corrective action.

This task will be a particularly difficult one, but I think that it is essential that each employee of the Federal work force may be assured of fair and equal treatment in his or her position.

To aid in the evaluation of Mr. O'Connor's credentials to serve in this capacity, the committee has received information from the Office of Government Ethics and the FBI. The nominee has filed responses to a biographical and financial questionnaire, and he has answered a set of prepared questions.

Without objection, this information will be made a part of the committee hearing record.

[The information referred to follows:]

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

Question 1. Name: (Include any former names used.)
Answer. Karl William O'Connor.
Question 2. Address: List current residence address and mailing address.
Answer. 3121 Sleepy Hollow Road, Falls Church, VA 22042.

Question 3. Date and Place of Birth.

Answer. August 1, 1931; Washington, D.C.

Question 4. Marital Status: (Include maiden name of wife or husband's name.)

Answer. Married Judith Ann O'Connor (nee Byers).

Question 5. Names and ages of children.

Answer. Blair William (29), Frances Lucile (24), Brian Anthony (23), Brendan Johnson (21).

Question 6. Education: List institution(s), dates attended, degree received and date degree granted.

Answer. Institution, dates attended, degrees, and dates of degrees: U. Va. Law School, September 1955 to June 1958, LLB, June 1958. U. Va. College, September 1949 to June 1952, BA, June 1952. Union College, Schenectady, N.Y., September 1948 to June 1949 (transferred to U. Va.).

Question 7. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

Answer. May, 1981 to Present—Inspector General, Community Services Administration: Nominated by President Reagan and confirmed by the Senate as Inspector General of CSA. As statutory Inspector General, provide leadership and coordination in the execution of Federal policy to promote ecomony and efficiency in government and to detect and prevent fraud, waste, and mismanagement. Evaluate management of Federal Agency providing employment for 100,000 Federal and local employees through some 2,000 entities nationwide. Direct and supervise internal and external audit of program and fiscal operations as well as investigations of criminal misconduct. Report only to the head of the Agency and the Congress.

Member of President's Council on Integrity and Efficiency in Government established by President Reagan by Executive Order immediately after election.

Member of Investigations-Law Enforcement Committee of President's Council; Committee designs law enforcement policy for Federal Anti-Fraud Programs.

Accepted this appointment with the intention of participating in closing out this Agency, pursuant to the President's campaign commitment.

April, 1980 to April, 1981—Special Counsel for Interagency Coordination/Staff Director, Executive Group Staff: The Executive Group was established by Presidential directive under the Chairmanship of the Deputy Attorney General to provide leadership, policy, and operational guidance to the Inspectors General of the United States in reducing fraud and waste in government programs.

As Special Counsel, advised the Deputy Attorney General on legal issues, law enforcement policy, operational programs and matters effecting the Executive Group. As Staff Director, supervised an interdisciplinary staff of professionals; developed and executed projects, performed operational analysis, interagency audits, management review and design for Inspector General operations, staff studies on law enforcement matters, goal analysis and planning and report preparation; conducted Congressional liaison as appropriate.

After election of President Reagan, in cooperation with White House Staff, designed and drafted Executive Order 12301 which disestablished the Executive Group and established the President's Council on Integrity and Efficiency in Government, composed of the statutory Inspectors General and the FBI, and chaired by the Deputy Director of OMB/Counsel to the President.

Aug. 1978 to April, 1980—Senior Trial Attorney (Prosecutor/GSA Task Force): Served as senior litigator and led teams of investigators and lawyers in grand jury investigations of fraud schemes at General Services Administration. Developed and successfully conducted major fraud trial presentation. Coordinated with Inspector General, senior FBI executives and senior officials of the Department of Justice, in ways and means of handling such fraud matters. Attended Congressional hearings and conducted liaison with Senators, Congressmen and involved Committees' staff.

July, 1976 to July, 1978—Associate Justice and then Chief Justice—High Court of American Samoa: Appointed Associate Justice of American Samoa, June, 1976. On January 3, 1977, appointed Chief Justice of the Territory.

Besides trial and appellate judicial duties, had full administrative responsibility for personnel, facilities, property and budget; testified before the local legislature on matters relating to the court.

Established the first court budget control system; installed a new system of court procedure similar to the Federal; brought the criminal docket from two years' behind to current; established a jury trial system; conducted the first jury trial; published court decisions (1900–1975) for the first time.

Aug. 1975 to July, 1976—Vice President & Counsel—Association of Motion Picture & Television Producers Inc.: Represented motion picture and television producers in: negotiations involving some 30 craft labor unions; dealings with state and local government;[1] and legislation; NLRB proceedings.

May, 1975 to Aug. 1975—Special Counsel—Intelligence Coordination: Principal officer of the Department of Justice responsible for negotiations and arrangements regarding classified and security matters between Senate Select Committee, FBI, Department of Justice and White House. Liaison as appropriate with the intelligence community; reported to the Attorney General, the Deputy Attorney General and the Counsel to the President of the United States.

Aug. 1971 to May, 1975—Deputy Assistant Attorney General, Civil Rights Division, Department of Justice: Responsible for execution of national policy and supervisor of daily operations of Civil Rights Division, Department of Justice (178 attorneys, 63 para-professionals, 119 clerical employees). Coordinated with other divisions of Department of Justice and advised the Attorney General on Departmental law enforcement policy. Appeared as spokesman for the Department in litigation involving national policy; represented the Department and Administration in negotiations and public speaking engagements; made presentations before Congressional Committees.

June, 1970 to Aug. 1971—Chief, Criminal Section, Civil Rights Division, Department of Justice: Responsible for enforcement of national policy of law enforcement in the criminal area of the Civil Rights Division, supervising 20 attorneys, 6 para-professionals and 12 clerical employees. Approximately 15,000 matters and cases reviewed and prosecutive decisions made.

Aug. 1967 to June, 1970—Assistant to the Assistant Attorney General, Civil Rights Division, Department of Justice: Developed, by field survey and management analysis, major cases involving violations of Title VII (Equal Employment) of the Civil Rights Act of 1964. Conducted important Title VII and other litigation for the Assistant Attorney General.

Sept. 1966 to Aug. 1967—Deputy Associate Director Men's Center, Job Corps, OEO: Responsible for program and policy guidance and direction to project managers and area managers, and liaison with other governmental nad private organizations involved in the operation of 10 Men's Job Corps Centers located nationwide. Negotiated and supervised contracts totalling approximately $100 million annually with private organizations (e.g., IBM, Litton, ITT, RCA) covering training of 16,000 corpsmen by 8,000 contractor staff.

May 1966 to Sept. 1966—Area Manager, Men's Center, Job Corps. Responsible for supervision of contractor performance and enforcement of contracts for 4 Men's Urban Centers: 6,000 Job Corpsmen and 3,000 contractor staff, contracts totalling in excess of $35 million annually.

Dec. 1965 to May 1966—Chief, Survey and Review, Job Corps: Responsible for development and implementation of plans and evaluative procedures for Urban Centers in all phases of management and program, organizing, supervising and directing a staff of 20 professional educators, psychologists, consultants in nationwide interdisciplinary on-site evaluation studies.

June 1961 to Dec. 1965—Trial Attorney and Special Attorney, Tax Division, Department of Justice: Reviewed some 200 criminal tax cases and tried major criminal tax cases nationwide; as Special Attorney, conducted nationwide grand jury investigations; briefed and argued civil and criminal tax cases in various circuits and successfully opposed various petitions for certiorari; assigned to Civil Rights Law enforcement by Attorney General Kennedy from May, 1964 to November, 1965; tried the original Civil Rights (public accommodations) cases in Alabama and Mississippi.

Sept. 1960 to June 1961—Associated with S. H. Kahn, Esquire, Investment Building, Washington, D.C. (ICC Trial practice).

Sept. 1959 to Sept. 1960—Associated with J. Y. Merrell, Esquire, Shoreham Building, Washington, D.C. (Tax trial practice and general practice).

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[1] During 1975–76, while in California, I served on a State wage board dealing with motion picture industry minimum wage issues.

June 1958 to Sept. 1959—Law Clerk to Honorable Roby C. Thompson (deceased), Chief Judge, U.S. District Court for the Western District of Virginia; drafted jury instructions, legal memoranda and did legal research for the court.

1955 to 1958—Law School, University of Virginia.

1952 to 1955—Military Service: Commissioned Second Lieutenant, USMC, June, 1952; served in U.S., Japan, Korea, and Hawaii as Infantry Officer, platoon commander; intelligence officer; discharged to Reserve status in May 1955 as First Lieutenant. Serial #056742.

During college and law school, owned and operated sandwich and milk concession (40 hours per week); during summer months operated ice cream truck business (60 hours per week); miscellaneous work experience includes heavy construction; merchant marine seaman; cook and waiter; tractor operator; longshoreman.

Question 8. Government Experience: List any experience in, or association with Federal, State or local governments, including any advisory, consultative, honorary or other part-time service or positions.

Answer. As above in response to Item 7, all Federal experience is listed.

Question 9. Business Relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership or other business enterprise, educational, or other institution.

Answer. None.

Question 10. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable and other organizations.

Answer. ABA (professional), 1959—present; PAD (law) 1955 present; Sigma Nu (social), 1949—present.

Question 11. Political affiliations and activities: List all offices with a political party or any public office for which you have been a candidate. List all memberships and offices held in or financial contributions and services rendered to all political parties, or election committees during the last 10 years.

Answer. I am a Republican and have been for more than 30 years. In 1960 I was an Attorney Volunteer for Nixon-Lodge in Washington, D.C.

Question 12. Honors and Awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievements.

Answer. NROTC scholarship 9/49—6/52 (UVA); Dean's List of Distinguished Students (UVA); military theater medals for USMC service during Korean War 1952–55. Recognition for federal litigation and management:

1964—Letter of commendation for trial work from Attorney General Kennedy; Sustained Superior Performance Award by Acting Attorney General Katzenbach.

1965—Letter of commendation for trial work from Assistant Attorney General Marshall; (1966–67 at Job Corps on detail and reassignment, returned to Justice).

1968—Letter of appreciation for street team work (IDIU) Attorney General Clark.

1969—Nominated for John Marshall Award for pre-trial investigative work and resolution of complex litigation.

1970—Letter of commendation from Chairman Bill Brown, EEOC, for motion picture industry settlement agreement.

1971—Letter of commendation for trial work from District Judge Weigel; Nominated for Attorney General Special Commendation for trial work; Outstanding performance rating—Department of Justice; Letter of commendation for trial work from District Judge Hauk.

1972—Outstanding performance rating—Department of Justice.

1974—Outstanding performance rating—Department of Justice.

1975—Outstanding performance rating—Department of Justice; Attorney General's Special Commendation Award from Attorney General Levi; Deputy Attorney General's Special Commendation Award from Deputy Attorney General Tyler; (1976–1978 California and American Samoa).

1979—Outstanding performance rating—Department of Justice; Letter of commendation for trial work from District Judge Whipple.

1980—Outstanding performance rating—Department of Justice.

Question 13. Published Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Answer. In about 1971, I coauthored an article in "The Police Chief" on the police officers' responsibilities under federal civil rights statutes. As a trial and appellate lawyer, I have written many briefs which were published. As Chief Justice of American Samoa, I wrote opinions which established territorial law in a variety of areas including government relationships with employees, comparative negligence, taxation, and interpretations of the criminal law. I also wrote the opinion which established trial by jury in the Territory for the first time since cession, and then implemented the law and set up the trial jury selection system by court rule. Significant litigation is listed on the following pages.

Significant Criminal Litigation Conducted

White collar/bribery

1979—*U.S.* v. *Lowell*, et al.—FS—(DNJ)—As Chief Trial Counsel, personally prosecuted a protracted (some 20 jury trial days) criminal case involving a lawyer who conspired with others to corrupt GSA officials. The defendants were all convicted in November, 1979, *U.S.* v. *Lowell*—490 F. Supp 897 (1980); Affirmed—F2d—(#80-2057) May 8, 1981 (CA3).

Racketeering/tax evasion

1965—*U.S.* v. *George Raft*—(movie actor) Grand jury, indictment, conviction for false statement (August 1965).

1964—*U.S.* v. *Fred Black*—(lobbyist) Trial conviction for tax evasion; appeal, affirmed 353 F.2d 885, cert. denied 384 U.S. 927; remanded per Solicitor General memo 384 U.S. 983.

1963—*U.S.* v. *Max Jaben*—(racketeering case) Grand jury, indictment, conviction for tax evasion; 226 F. Supp. 757; affirmed on appeal 333 F. 2d 535; affirmed 381 U.S. 214, rehearing denied 382 U.S. 873.

U.S. v. *Ed Jaben*—(racketeering case) Grand jury, indictment, conviction for false statement appeal, affirmed 349 F. 2d 913.

1962—*U.S.* v. *Pollock, et al.*—(businessman) Grand jury, indictment, conviction for tax evasion; criminal contempt acquittal 201 F. Supp. 542.

Significant Civil Rights Litigation Conducted

1972—Nashville School Case—*Kelly* v. *Metro City Board of Education of Nashville, Tennessee*—463 F2d 732, 746, (CA6 1972). This matter was one of several selected in 1972 by the Attorney General to contest the scope of "bussing orders" entered in district courts. A motion to intervene was led by the Department. All Civil Rights Division attorneys who were assigned, refused to represent the Government, asserting a "conflict of conscience." As Principal Deputy Assistant Attorney General, I was asked to present the position less than 16 hours before the hearing. While unfamiliar with the record in the matter, I appeared for the Department to state the government's position. In my view, the Executive has a right to be represented by an attorney. I stated that legal position to the court; the court was intensely critical of the government's position.

1969–73—*In re: The Los Angeles Motion Picture and Television Industries*—Conducted a 3-month investigation of employment practices in these industries supervising a staff of over 20 professional investigators; negotiated a contractual labor agreement with the entire industry (over 75 corporations and associated labor unions) to establish fair employment practices in the industry. This is the only industry wide employment practices settlement agreement ever negotiated by the Department of Justice. Litigated challenges to the constitutionality of the agreement; *IATSE Group for Union Equality* v. *AMPTP*, et al., 71-2630 LTL.

1970—*U.S.* v. *Gaines, et al.*, (C.D. Calif); a major criminal prosecution of LAPD officers for killing two unarmed Mexicans in Los Angeles.

1970—*U.S.* v. *Riche and Johnson* (N.D. Calif.); a major criminal prosecution of deputy sheriffs, Alameda County, for indictments ensuing the "Peoples Park" demonstrations.

1969–70—*In the matter of The Report of the January 1970 Grand Jury*—A five month grand jury investigation of the shootings of Black Panther leaders in Chicago, undertaken at the direction of Attorney General Mitchell; co-authored a published report analyzing the matter.

1968—*U.S.* v. *Sinclair Refining Co.* (consent decree) negotiated the implementation of equal employment opportunities for Negroes in the Houston Refinery.

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1967–68—*U.S.* v. *Bethlehem Steel Corp.* 312 F. Supp. 977 aff'd and modified 446 F. 2d 652 *held* seniority system and personnel practices of Lackawanna plant discriminated against Negroes by denying them equal employment opportunity and by assigning them to the hottest and dirtiest jobs.

1965—*U.S.* v. *Clarksdale King & Anderson Co., et al.* C.A. D.C. 6461 N.D. Miss. 288 FS 792 11/11/65; 10 Race Relations Law Reporter 1762 *held* a hotel operating as a sham private club could not lawfully deny accommodations to Negroes.

1965—*U.S.* v. *The Warren Co., Inc., et al.* C.A. 3437–64 S.D. Ala. 7/2/65; 10 Race Relations Law Reporter 1293 (— F. Supp. —) *held* denial of service to Negroes by several restaurants in Selma, Ala. violated CRA 1964.

1965—*U.S.* v. *Catrino, et al.* C.A. 64–443 N.D. Ala. 4/13/65 *held* denial of service to Negroes by several restaurants in Tuscaloosa, Ala., violated CRA 1964 (—F. Supp. —).

1964—*U.S.* (*Katzenbach*) v. *McClung*—(restaurant case) landmark public accommodations suit deciding constitutionality of Civil Rights Act of 1964; 3 Judge District Court, 223 F. Supp. 815 (holding not constitutional); Supreme Court held constitutional 379 U.S. 294.

Question 14. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have written copies of and which are on topics relevant to the position for which you have been nominated.

Answer. None.

Question 15. Selection: (a) Do you know why you were chosen for this nomination by the President? (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

Answer. (a) I believe that I do. (b) Proficiency as a trial lawyer gained in civil and criminal litigation as prosecutor, defense counsel, and judge over the past 20 years or more; broad federal management experience; extensive experience in labor relations in the public and private sectors; repeated success in achieving the difficult with efficiency; and, a conservative approach to the law and to the functions of government.

B. FINANCIAL DATA

(Retained in Committee files.)

C. FUTURE EMPLOYMENT RELATIONSHIPS

Question 1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Answer. Yes.

Question 2. Do you have any plans, commitments or agreements to pursue outside employment with or without compensation, during your service with the government? If so, explain.

Answer. No.

Question 3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization

Answer. No.

Question 4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

Answer. No.

Question 5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Answer. Yes.

D. POTENTIAL CONFLICTS OF INTEREST

Question 1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

Answer. None.

Question 2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

Answer. None of which I am now aware.

Question 3. Describe any business relationship, dealing or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

Answer. None of which I am now aware.

Question 4. Describe any activity during the past ten years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

Answer. In my capacity as Deputy Assistant Attorney General, as Chief Justice, and as Inspector General, I have commented upon legislation. As Chief Justice, I proposed legislation to the Territorial Legislature.

Question 5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

Answer. In the event of a conflict of interest, I would recuse myself from consideration of the topic.

Question 6. Do you agree to have written opinions provided to the Committee by the General Counsel of the agency to which you are nominated and by the Attorney General's office concerning potential conflicts of interest or any other legal barriers to your serving in this position?

Answer. Should that be legally appropriate, I would agree without hesitation.

E. LEGAL MATTERS

Question 1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

Answer. In about 1963, I was Counsel for the prosecution in the *U.S.* v. *Campdera & Olivard* in U.S. District Court in Dallas, Texas. The Trial Judge was the Honorable Whitfield Davidson. Judge Davidson had a local rule to the effect that one could not use the word "liar" to refer to anyone in his courtroom. I was unaware of the rule; I asked a defense witness, who had said that a U.S. official had misrepresented certain facts, if he (the witness) was calling the U.S. official a liar. Judge Davidson, who was hard of hearing, apparently thought I had called the witness a liar. He fined me $25.00 for contempt; he remitted the fine the following day.

Question 2. Have you ever been investigated, arrested, or charged or held by any federal, state or other law enforcement authority for violation of any federal, state, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

Answer. No. (In 1967, I received two speeding tickets—one in Wisconsin and one in Virginia. The fines were $15.00 in Wisconsin and $25.00 in Virginia. Under Virginia law at that time, an automatic 90-day driver's license suspension ensued after any two speeding violations in a 12-month period; accordingly, I then turned in my Virginia driver's license to VA/DMV for 90 days.)

Question 3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceedings or civil litigation? If so, provide details.

Answer. a. In 1972, after a 3-year separation, I was divorced (no fault, uncontested) from my first wife. The proceeding is *O'Connor* v. *O'Connor*, Circuit Court, Arlington County, Virginia.

b. In 1976, I was named as a co-defendant in a law suit for money damages brought by certain defendants who had been federally prosecuted while I was an official of the Department of Justice. The defendants alleged that their rights had been abused by the prosecution and that they had been improperly indicted by a Grand Jury before which I and others presented evidence. The case brought by these defendants was styled *Olive et al.* v. *U.S.A. et al.* #76–32 (C) E.D. Mo. It was dismissed as to all defendants by the court, upon motion of the United States.

c. In 1979, I was named as a co-defendant in an action styled *Cohan et al.* v. *Holden Pest Control, et al.* #268.174, in Los Angeles County Superior Court. Other defendants included the construction company, all prior owners, the real estate brokers and the inspectors who approved the premises for the Cohans before the purchase. The purchase was effected when I was overseas and after I had been out of the country for some months. The action alleged faulty construction of the

residence in Los Angeles, which I had acquired and had owned for only 10 months while living in Los Angeles. The suit was brought *pro se* by the Cohans. The matter pends on the docket.

Question 4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense?

Answer. No.

Question 5. Please advise the Committee of any additional information favorable or unfavorable, which you feel should be considered in connection with your nomination.

Answer. I am prepared to answer any question the Committee may pose.

AFFIDAVIT

I, Karl William O'Connor, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

September 30, 1982 — KARL WILLIAM O' CONNOR

My commission expires August 31, 1983.

ROSE B. HALL,
Notary.

RESPONSES TO PRE-HEARING QUESTIONS

I. NOMINATION PROCESS AND POTENTIAL CONFLICTS

Question 1. Were any conditions, expressed or implied, attached to your nomination to be the Special Counsel to the Merit Systems Protection Board?

Answer. No.

Question 2. What commitments have you made with respect to the policies and programs you will attempt to implement as the Special Counsel to the MSPB?

Answer. The only commitment I have made is to execute my statutory responsibilities, if I am confirmed.

Question 3. Do you anticipate that there will be any matters under consideration by the Office of the Special Counsel from which you will have to disqualify yourself?

Answer. No. I have not yet reviewed the case files at OSC/MSPB; I am presently unaware of any such matters.

II. ROLE OF THE OFFICE OF SPECIAL COUNSEL

Question 1. Do you believe that the Special Counsel should act as an advisor to agencies on acceptable personnel practices, or do you believe that he should be an enforcement agent of the civil service regulations? For example, do you think it was appropriate for the Special Counsel to print a handbook for the use of heads of agencies on certain aspects of the laws on federal personnel practices?

Answer. The Office of Special Counsel was designed to protect the merit system from abuse and to protect whistleblowers from reprisal. In my view, the statutory role of the Special Counsel is sufficiently broad to encompass, as a collateral matter, the tender of suggestions to responsible federal agencies to ensure that due process rights of federal employees are recognized and protected, as long as these suggestions do not traverse the statutory prohibitions against issuance of advisory opinions concerning law, rule or regulation. Although general advice as to the due process rights of federal employees is not inappropriate, the office should probably not act as an advisor in specific cases since this properly is the province of OPM, OLC/DOJ and of the various general counsels of agencies; such action could conceivably place the Office in a position of conflict, and could traverse the statutory prohibitions against advisory opinions.

I have not studied the handbook which was noted in the question. I understand that it stated required procedural safeguards for civil service employees' due process rights. I feel it to be well within the ambit of the statutory role of the Special Counsel to generally remind agencies of the right to, and the nature of, procedural due process accorded to civil service employees.

Question 2. What do you feel are the most important functions of the office to which you have been nominated?

Answer. The primary role of the Special Counsel is that of an independent advocate to protect the merit system. Functional modes of statutory action include: (1) assuring protection for, and attention to, whistleblowers; (2) reviewing, in-

vestigating and taking appropriate action on allegations of prohibited personnel practices; and (3) intervening as required before the MSPB.

Question 3. What coordination do you believe is necessary between the Office of Special Counsel and the Office of Personnel Management?

Answer. Since each agency has specific responsibilities under the civil service laws, and both are independent, the relationship should be such as will provide efficient and appropriate interaction, without any reduction of the independence of either agency. Action in litigation by OSC *may* impact upon OPM policy; conversely, OPM, in its rulemaking, *will* impact upon the definition of federal personnel policy and thus may have a direct effect on the OSC.

Question 4. How do you view the relationship and responsibilities of the Special Counsel to (a) the President, (b) the Congress and (c) the Executive Agencies?

Answer. (a) The Special Counsel may statutorily relate to the President, in several eventualities; e.g., a failure of Executive Agency response to a charge of prohibited personnel practices; a specific perception that the prohibited practice is of such a level of importance that the President must be informed of the problems and of specific corrective actions; or of a prohibited personnel practice or a personnel violation by a Presidential appointee. These reporting responsibilities overlap reporting responsibilities to the Congress. As an *ex officio* member of the President's Counsel on Integrity and Efficiency, the Special Counsel has additional special access through the Council Chairman, to the President. If confirmed, I will do my best to ensure the execution of the President's commitment to reduce fraud and waste in government, and to ensure that appropriate matters are brought directly to the President's attention by the Office of Special Counsel through the channels provided.

(b) The OSC formal reporting responsibilities are, of course, delineated in the CSRA of 1978. The relationship to the Congress which I should seek would include continuing communication with interested Members of Congress and especially with the staff of the Committees which have oversight and specific interest in the sectors of responsibility of the MSPB and the Special Counsel.

(c) The Executive Agencies may generally be expected to be cooperative with the Office of Special Counsel. Under President Reagan's leadership, the agencies are directed to ensure that merit system requirements are followed. The agency Inspectors General are also especially committed to ensuring the attention of the agencies to the merit system. Because of *ex officio* membership of the Special Counsel in the President's Council on Integrity and Efficiency, and because of my service on that Council since its inception, as an Inspector General, I would expect excellent cooperation from the executive agency and from the respective Inspectors General.

III. RELATIONSHIP TO THE MERIT SYSTEMS PROTECTION BOARD

Question 1. How do you view the relationship between the Office of Special Counsel and the Merit Systems Protection Board?

Answer. The Board has a quasi judicial function; the Special Counsel has a prosecutive function before the Board. Thus, the entities are interdependent, but must be completely independent of each other in order to function in accord with their respective statutory obligations and authorities. I view the relationship as analogous to that of a prosecutor to a court; having been both a prosecutor and a judge I can appreciate the problems of each.

Question 2. What coordination do you expect between the Special Counsel and the Board?

Answer. Responsibilities for protecting the merit system are separately held by both agencies. I am advised that the relationship has evolved into joint recognition of institutional independence of the two agencies, with informal cooperation in matters of logistics in order to increase administrative efficiency. I expect the extant recognition of independence to continue, as well as the logistical cooperation.

Question 3. Do you feel that backlog is still a serious problem at MSPB?

Answer. The status of MSPB backlog is outside the scope of control of the Special Counsel. However, I am advised that the backlog of MSPB is being reduced by the Board and the reduction can be expected to continue. I am advised there is no significant case backlog at OSC. I have not sought to examine the OSC

case files at this time. If confirmed, I will do my best to ensure that the OSC reacts responsively and initiates actions in a prompt and efficient manner.

IV. RELATIONS WITH CONGRESS

Question 1. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Answer. Yes.

Question 2. Are you willing to provide such information as is requested by such committees?

Answer. Yes.

Question 3. Do you have any plans to recommend legislation in the coming session of Congress?

Answer. At present, I have no plan for new legislation covering OSC. In my view, statutory initiatives should only be undertaken to fill apparent needs of the Republic; at this juncture of time, and from my present point of view, it seems that the boundaries of extant OSC legislation have not yet been fully explored. Accordingly, I am not prepared to propose new legislation at this time.

Chairman ROTH. Mr. O'Connor, our committee rules require that all witnesses at nomination hearings give their testimony under oath. So, will you please stand and raise your right hand?

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

TESTIMONY OF K. WILLIAM O'CONNOR, NOMINEE TO BE SPECIAL COUNSEL OF THE MERIT SYSTEMS PROTECTION BOARD

Mr. O'CONNOR. I so swear, Senator Roth.

Chairman ROTH. Thank you. Please be seated.

Mr. O'CONNOR. Thank you.

Chairman ROTH. As I indicated, members of this committee have already asked some substantive prehearing questions. Your responses have been placed in the record. I will not repeat those questions, but I do have a few additional questions.

Are you aware of anything in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. O'CONNOR. No, Senator Roth. I am aware of no conflict of any kind within the duties of which I am about to enter.

Chairman ROTH. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the duties of the Office of Special Counsel?

Mr. O'CONNOR. No, sir.

Chairman ROTH. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Mr. O'CONNOR. With pleasure, sir.

Chairman ROTH. I am sure you know that several Members of Congress have been extremely critical of the Office of Special Counsel. Some have suggested that perhaps it should be abolished.

In light of that criticism, do you believe that the problems are severe enough to warrant a reorganization? What do you plan to do to make the Office of Special Counsel a more useful and effective tool?

Mr. O'CONNOR. That is a very broad question, Senator Roth. I will respond as briefly as I can.

First, I think that the Office of Special Counsel, has, indeed, as the Senator has said, been subjected to a good deal of criticism over time. The problems which it has encountered have, in part, been because the leadership of the Office has changed frequently, and tenure has been shorter than might have been useful.

I have been made aware of the current organizational structure of the Office of Special Counsel, and I have had the opportunity to meet the senior executives of the career staff. It seems to me that there is a probability that more stress on staff in the field may be required. It seems to me, at this time, that there may be a need for perhaps another field operation or for strengthening existing field operations because although some people seem to think so, it is not true that all civil servants are in Washington yet.

The Office of Special Counsel does not have offices in some of the major centers of civil service population; for example, Denver.

It seems to me that I would have to give very careful consideration within the constraints of the budget to expanding the geographic activities.

Second, I think that the fruits of the reorganization which was undertaken in the past year have yet to be fully realized, and I am uncomfortable with the idea of repetitive reorganizations of entities until and unless there is a substantive reason and a significant advantage to be served. So I would expect to do no reorganization in the immediate future until I have had an opportunity to preceive ways in which the organization could be well strengthened.

Finally, I think that the committee and the Senate and, indeed, in some cases, the media has been concerned about backlogs and dilatory responses which may have been perceived or may have, indeed, occurred. Without knowing the background of those issues, I would say that I will pledge to accelerate response to each of the complaints which comes to the Office of Special Council, if confirmed, in order to insure maximum service to the people of the United States, who are the body politic served by the Office of Special Counsel, as well as the Federal civil servants which are its immediate area of jurisdiction.

Chairman ROTH. Last year a study was compiled by the Merit Systems Protection Board on the reporting of waste, fraud, and mismanagement by Federal employees. Will you take any special initiative to insure that employees need not fear reprisal for the reporting of abuses in the Federal Government?

Mr. O'CONNOR. Absolutely, Senator. I think that my experiences over the past year, specifically as Inspector General at CSA, have given me a special appreciation of the kinds of problems that arise when employees bring to the attention of the authorities in their agencies problems of waste, fraud, and mismanagement.

When legitimate issues of that type are brought to my attention, I will insure protection to the fullest extent of the law, and my view of the law is that protection of the employee who legitimately expresses a fraud, mismanagement, waste, whistleblowing complaint ought to be most significant.

Chairman ROTH. So we could look forward to your being an activist in protecting these rights as Special Counsel?

Mr. O'CONNOR. Yes, Senator Roth, activist in the protection of the rights of those who have legitimate complaints.

Chairman ROTH. There have been some complaints in the past about the office which you will soon assume. I know that Congressman Pat Schroeder has expressed concern. I want to say that we, on this committee, will be carefully watching to make sure that your Office is effective in protecting the rights of the civil servant.

Mr. O'CONNOR. I appreciate that, sir.

Chairman ROTH. What actions do you expect to take as Special Counsel to insure that waste, fraud, and mismanagement are diminished to the maximum possible extent?

Mr. O'CONNOR. There are several opportunities that are uniquely available to those of us who have the advantage of serving on the President's Council on Integrity and Efficiency in Government, and where that service of mine and my involvement in the establishment of that council will come into significant play is that I will have major interactive relationships already established with the Federal Inspectors General in the several agencies which have Inspectors General.

I expect those agency relationships with those executives to continue to be fruitful in the development of opportunities to insure protection against fraud, waste, and mismanagement in Government within the scope of responsibilities of the Office of Special Counsel.

Chairman ROTH. Senator Levin?

Senator LEVIN. Thank you, Mr. Chairman. First, I note from your biographical information your name is Karl William O'Connor?

Mr. O'CONNOR. That's correct, Senator.

Senator LEVIN. Now that you are under oath, and with all due respect to the chairman, why in heaven's name did you drop your name Karl?

Mr. O'CONNOR. I sign my name K. William O'Connor.

Senator LEVIN. It is such a beautiful name.

Mr. O'CONNOR. If you want me to go into that, Senator, I will be delighted to do so.

Senator LEVIN. No; I think our chairman has better things to do with his time this year, and hopefully, so do I.

I have just a few questions. One is the understanding of your role. Once you find that a complaint is legitimate, to put it in your words, at that point do you view your primary role as advocating the rights of the employee who has the legitimate complaint, or do you view your role as some kind of a go-between between that employee and his employer?

Your answer to the questionnaire was that your primary role is to protect the merit system. I just want you to be a little more precise on that.

Take the person who has a legitimate complaint, and I use the term legitimate. Are you either an advocate of the employee, of the victim of the prohibitive personnel practice, or are you a go-between, or do you just defend the system in some sense?

Mr. O'CONNOR. I hope not to ever be accused of being vague, Senator Levin, so I will try not to be vague in this answer.

In my view, when a legitimate complaint, whistleblowing type is brought to my attention and there is a reprisal of a personnel practice

or something like that, that something prohibited is being done, my responsibilities, if confirmed in the Office of Special Counsel, are to insure the protection of the employee. That is as clear as I can make it.

But in cases like that, that there are more than one mode of insuring the protection of the employee. I am not a man given to histrionics in the exercise of the office which I hold now and held in the past. I do not believe that in all cases, the celebration of what you are doing from the battlements is the most effective way of carrying out a mandate established by Congress.

So those are the dimensions which I intended to imply in the answer which you have referred to.

Senator LEVIN. I was not asking you about how you would defend and advocate the rights of the employee who has the legitimate complaint. That can be done in many ways. Your way may be a quieter way than others. In your view, you do what you think is most effective. I believe you will achieve the goal you set out to achieve. You can do that in different ways.

My question was, though, do you view yourself as an advocate at that stage and try to effectively remedy the wrong, however you may do it?

Mr. O'CONNOR. Surely, and if one does not set out to remedy the wrongs, one fails in the obligation, it seems to me, so, yes.

Senator LEVIN. I understand your answer, though: It is to advocate that employee's position once you find it is legitimate, and the mechanism of advocating is your own style. Is that a fair summation of your answer?

Mr. O'CONNOR. Lawyers are always wary of other lawyers' summations of their answers, but I think that is very close to what I would say.

Senator LEVIN. The GAO reports that it takes an average of 95 days for the Special Counsel to request an agency report although by statute it is supposed to take only 15 days. You have indicated you are going to look into ways of improving the speed with which these cases are processed.

That is a pretty sad record, if I read these figures right: 95 days on the average for a report which the staute says should be ordered within 15 days. It also shows that once the Special Counsel receives the report, it takes an average of 71 days just to inform the complaining employee the report has been received. That is simply a matter of notifying the individual.

My question to you is this: I think you are aware of the fact that EEOC allows an individual after a certain length of time that a complaint has not been in some way disposed of to file a complaint with the Federal district court.

Mr. O'CONNOR. I am aware of that.

Senator LEVIN. 180 days or something like that.

Mr. O'CONNOR. Yes. I believe it is 180 days.

Senator LEVIN. Would you consider that a possible amendment that you could support, that if we cannot get these timelines down to something reasonable, we also authorize individuals to go to court, say, after 6 months of not hearing from anybody?

Mr. O'CONNOR. I think we are dealing with due process, Senator, on the one hand, and legislative initiative on the other. My concept of

due process is that the longer it is delayed, the more likely it is going to be denied and that prompt process is part of due process.

So dealing with the issues that are postulated in the report issued to which you refer, it seems to me that one of my obligations is to cut the time so that you do not have that kind of report presented to you again.

Now, answering from there to the next question, I am a conservative when it somes to legislation. I do not like to legislate or to recommend legislation until a full and fair opportunity to explore and interpret existing legislation has been undertaken. What you suggested as 180 days is not a bad idea in my view, as an idea. But it may not be necessary of legislation and, in my view, at least, this country does not need more legislation; it needs less.

It seems to me that to do what is obligatory upon the Special Counsel requires exercise of dispatch in handling problems. It seems to me that if I do not do what you think ought to be done, you, members of the committee, and the chairman, in that way, that a good device available to the Congress, a lot less expensive than legislation and a lot more effective, is to have me, if I am responsible for it, or somebody else, up for oversight and ask them what in the world they are doing.

Senator LEVIN. The chairman has made reference to Congresswoman Schroeder proposing that the Office of Special Counsel be abolished; it has not been effective. That is one way of reducing the legislative load.

Mr. O'CONNOR. Absolutely.

Senator LEVIN. Are you suggesting something a lot less drastic than that? I think you said less legislation is better. She is proposing to abolish the Office because it has been so ineffective. I take it since that is legislation on the books you would support that.

Mr. O'CONNOR. Senator Levin. if I cannot make the Office work, if I am confirmed, I will lead the parade to seek to do away with it, because I think that to lean on the public with ineffective agencies is a gross misrepresentation of the appropriate forms of Federal Government.

If I cannot do it, or somebody else cannot do it, sure, I would have it done away with.

Senator LEVIN. I agree that we do not need more legislation. We ought to make the legislation that we have on the books work. As a matter of fact, the chairman and I and other members of this committee have been involved in many efforts of exactly that, oversight, and trying to make existing legislation better.

I think the goal is exactly the same.

My question to you is a relatively straightforward one: It may be necessary to make this legislation function properly to give an employee the alternative to get to court because it is taking so long to get an answer from the Special Counsel; is that something you might look favorably upon?

Mr. O'CONNOR. Since to look favorably on it I would have to admit my own failure in my own execution of the problem, I think that is a fair question. But I do not think that I am prepared to indicate that I am going to do so if I am confirmed.

Senator LEVIN. So if you cannot make this thing work, I emphasize get them all back within 180 days, then you are saying you ought to abolish the Office?

Mr. O'CONNOR. I am saying, Senator, that if the Office does not work, it ought—and cannot be made to work because of reasons that cannot be adjusted short of legislation, then legislative amendment is something the Senate might wish to consider, or in the House. But what that legislation would be and how it should be cast; when it should be presented; and what it should do, would be something that, with the wisdom of the committees and of the Senate and of the Executive, would have to be developed before it can be stated.

I do not think I am prepared to say that today I support legislation of the type you describe, although in hypothesis, and in fact, I support procedural due process being accorded with promptness and dispatch, and I think 180 days is a pretty long time for procedural due process.

Senator LEVIN. My last question, Mr. Chairman, is, you indicated you are aware that the EEOC does have a provision in its statute which allows a complainant to file a complaint in district court if the EEOC has not reported back to that complainant within 180 days.

Would you think that that reflects failure on the part of the EEOC and that we ought to either eliminate that provision allowing the employee to go to district court or eliminate EEOC? Does that follow from your last answer?

Mr. O'CONNOR. Well, I have been doing business and have done business with the EEOC, as you have seen from my résumé. I guess since the beginning of the Civil Rights Act, in fact, and I tried a great many of the cases involving employment discrimination for the Department of Justice in years gone by.

Sometimes the EEOC has worked well; sometimes it has not worked well. One of the significant determinants of whether it has worked well or not has been how effectively it has been staffed and led and how much attention it was giving to doing its job as compared with sustaining itself, budgetwise, and sustaining itself in the eyes of the press and the public.

I do not think that I would say abolish EEOC. I would say that sometimes in such a situation a measure such as the 180-day rule is merited. But I do not think we are dealing with that in the Office of Special Counsel's issues.

Senator LEVIN. I just want to wish you good luck on your adventure.

Mr. O'CONNOR. Thank you very much, Senator Levin. I appreciate your questions, sir.

Chairman ROTH. Mr. O'Connor, I think you come here with a remarkable background for your new position. I have watched you these past few minutes as a witness. I wish most people could handle themselves as well as you have, and I too join in wishing you well in your new position.

I appreciate your being here. I apologize that we needed to hurry as a result of a vote. I think we are very fortunate to have a man of your caliber undertaking this highly important position.

Mr. O'CONNOR. Thank you very much, Senator Roth. I appreciate your courtesy, and I appreciate your holding the hearing today. Thank you.

Chairman ROTH. The committee is in recess.

[Whereupon, at 2:25 p.m., the committee was recessed, subject to the call of the Chair.]

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